THOTTATHIL B. RADHAKRISHNAN, J.

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M.F.A. Nos. 311 & 317 of 2000.

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Dated this the 14th day of October, 2006

O R D E R

These two appeals arise from an accident that occurred on 8.9.1989. Scooter No. KRK 9596 and scooter No. KBF 7586 collided. Petitioner in O.P. (MV) No. 37 of 1995 was riding the scooter No. KRK 9596 and the petitioner in O.P. (MV) No. 36 of 1995 was the pillion rider of that scooter. Both of them sued the owner, driver and insurer of the scooter No. KBF 7586 attributing negligence to the person who riding that scooter, exclusively with the total negligence.

2. Before the Tribunal the claimants gave evidence as PW1 & PW2. The owner, driver etc. had filed pleadings but did not give tender in evidence. The insurer did not obtain leave under Section 170 of the Motor Vehicles Act, 1988. I notice this to be reminded all the limited scope of the defence of the insurer in this case.

3. On record, the police scene mahazar and the FIR, as also, Ext. A17

judgment of the criminal court, the petitioner in OP(MV) 37 of 1995 was charge sheeted leading his acquittal by the criminal court. Paragraph 8 of the judgment, whatever an evidence, the value tends to show that even the criminal court has taken the view that the driver of the offending vehicle should have been negligent. Going by the scene mahazar, it appears that the accident happened while the petitioner in O.P.(MV) No. 37 of 1995 was overtaking a stationary lorry and was hit by scooter No. KBF 7586 scooter coming in the opposite direction. The scene mahazar are also appear to suggest, at least prima facie, that the petitioner in O.P. (MV) No. 37 of 1995 who was riding the scooter KRK 9596 cannot be mulcted with. Corroborating these are the testimonies of PWs 1 & 2. In the absence of any contra-evidence, in my view, the finding on the question of negligence by the Tribunal would require a second look at the hands of this court. Similarly, the Tribunal seriously heard any acting on Ext. B1 and B2 as if they contained findings of the Tribunal regarding negligence. They are merely awards passed by the Tribunal of claim petitions filed by the rider and pillion rider of the scooter KRK 9596 on settlement between the respective claimant and the insurer of the vehicle KRK 9596 which the petitioner in O.P. (MV) No. 36/95 was riding. There is no finding of negligence in those awards nor was that consent award passed with the consent of the petitioner in O.P. (MV) No. 37 of 1995. On the basis of what is aforesaid, it appears to be abundantly necessary that the insurer in this case is given an opportunity to find out whether these cases could be settled

out of court. To provide as an opportunity with the consent of the appellant and the contesting respondent insurer, the matters are adjourned to be listed in the Adalat of the High Court Legal Service Committee on 28.10.2006. The parties will appear before the Adalat with their respective counsel on that day.

THOTTATHIL B. RADHAKRISHNAN,
JUDGE.

csl

THOTTATHIL B. RADHAKRISHNAN, J.

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M.F.A. Nos. 311 & 317 of 2000.
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Dated this the 13th day of October, 2006

O R D E R

These two appeals arise from an accident that occurred on 8.9.1989. Scooter No. KRK 9596 and scooter No. KBF 7586 collided. Petitioner in O.P. (MV) No. 37 of 1995 was riding the scooter No. KRK 9596 and the petitioner in O.P. (MV) No. 36 of 1995 was the pillion rider of that scooter. Both of them sued the owner, driver and insurer of the scooter No. KBF 7586 attributing negligence exclusively on the person who was riding that scooter.

2. The owner, driver etc. filed pleadings but did not tender any evidence. The claimants gave evidence as PW1 & PW2. The insurer did not obtain leave under Section 170 of the Motor Vehicles Act, 1988. I notice this, to be reminded on the limited scope of the defence of the insurer in this case.

3. On record was the scene mahazar and the FIR, as also, Ext. A17 judgment of the criminal court. The petitioner in

OP(MV) No.37/1995 was charge sheeted leading to his acquittal by the criminal court. Paragraph 8 of the judgment of the Criminal court, whatever be its evidentiary value, tends to show that even the criminal court has taken the view that the driver of the scooter No.KBF 7586 would have been negligent. Going by the scene mahazar, it appears that the accident happened while the petitioner in O.P.(MV) No.37/1995 was overtaking a stationary lorry and was hit by scooter No.KBF 7586 which was coming from the opposite direction. The scene mahazar also appears to suggest, at least prima facie, that the petitioner in O.P.(MV) No.37/1995 who was riding the scooter No. KRK 9596 cannot be mulcted with liability. Corroborating these are the testimonies of PWs 1 & 2. In the absence of any contra-evidence, in my view, the finding on the question of negligence by the Tribunal would require a second look at the hands of this Court.

4. The Tribunal has also seriously erred in acting on Exts. B1 and B2 as if they contained findings of the Tribunal regarding negligence. They are merely awards passed by The

Tribunal, on claim petitions filed by the rider and pillion rider of the scooter No. KRK 9596, on settlement between the respective claimant and the insurer of the vehicle No. KRK 9596 which the petitioner in O.P. (MV) No. 36/95 was riding. There is no finding of negligence in those awards. Nor were those awards passed with the consent of the petitioner in O.P. (MV) No. 37 of 1995.

On the basis of what is aforesaid, it appears to be abundantly necessary that the insurer in this case is given an opportunity to find out whether these cases could be settled out of court. To provide an opportunity to do so, with the consent of the appellant and the contesting respondent insurer, these matters are adjourned to be listed in the Adalat of the High Court Legal Service Committee on 28.10.2006. The parties will appear before the Adalat with their respective counsel on that day.

THOTTATHIL B. RADHAKRISHNAN,
JUDGE.

csl